

Internal Revenue Service

Department of the Treasury

District
Director

1100 Commerce St., Dallas, Texas 75242

Date: APR 10 1996

Employer ID Number:

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code.

The information submitted indicates that you incorporated in the State of [REDACTED] on [REDACTED]. Article II of your Articles of Incorporation states that you are organized exclusively for civic betterment and general welfare purposes as follows:

- To render non-profit, constructive, civic service for the preservation and protection of the physical environment, the promotion of the common welfare and general good of the community and of the citizens who are residents, property owners, tenants and members of the general public in that certain part of [REDACTED] County, [REDACTED], which is defined as the "Project" in that certain instrument dated [REDACTED], entitled "Agreement Establishing Maintenance Charge" executed by [REDACTED];
- To foster and inculcate civic consciousness by means of active participation in constructive projects which will improve the said community and will thereby improve the city, state and nation of which it is a part;
- To promote and/or provide services and facilities for the maintenance, repair and beautification of those areas dedicated to or reserved for public use in said community;
- To expend the monies collected by this corporation from assessments or charges and other sums received by you for the payment and discharge of all proper costs, expenses and obligations, including costs of public liability insurance, incurred by you in carrying out any or all of the purposes for which you are formed.

Article II of your Bylaws states that your members shall be the record owner of a fee simple title to any land located in [REDACTED], a mixed-use development located in [REDACTED] County, [REDACTED]. It also states that the rights of the members are subject to: (1) the payment of any assessments as set forth in the provisions of the Protective Covenants; and (2) compliance with the provisions of the Protective Covenants.

Your 1024 Application for Recognition of Exemption states that you maintain and

landscape entrances, esplanades and open areas for the benefit of the property owners and all visitors. You also provide electricity for the common areas. This includes streetlights and lighting for the common areas.

Your financial income is primarily the gross dues and assessments of your members. You also receive interest income. Your expenses are for grounds maintenance, utilities, management and administration.

Your correspondence dated [REDACTED] states the following:

- You are made up of [REDACTED] acres;
- You are not a homeowner's association, therefore you have no single-family residences, apartments or residents;
- There are numerous commercial businesses and [REDACTED] governmental entities located within your boundaries;
- You have [REDACTED] members. The dues for [REDACTED] were \$[REDACTED] per square foot. The governmental offices are exempt from your assessments;
- You do not maintain any recreational or other facilities for your members;
- The [REDACTED] rebate expense was the excess of revenues for the year ending [REDACTED] and was refunded back to the members.

Included with this correspondence was a copy of your Protective Covenants. Section 4 of the covenants states that all tracts or parcels of land within the property shall be used solely for office, commercial, processing, research, servicing, light industrial manufacturing, warehousing, retail sales, and residential uses.

Your correspondence dated [REDACTED] states the following:

- The dues amounts assessed your members ranged from \$[REDACTED] to \$[REDACTED];
- Your dues amount is based on the square footage occupied by each individual member for two reasons: (1) this is the prescribed method according to your governing documents; and (2) this method results in the most equitable means of allocating the necessary assessment revenue required for your operations.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that:

"An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization

embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements."

The Revenue Ruling 72-102, 1972-1 C.B. 149 holds that a membership organization formed by a developer to administer and enforce covenants for preserving the architecture and appearance of a housing development and to own and maintain common green areas, streets, and sidewalks for the use of all development residents is exempt under section 501(c)(4).

The Revenue Ruling 74-99, 1974-1 C.B. 131, modified and clarified Revenue Ruling 72-102. It provides that in order to qualify for exemption under IRC 501(c)(4), a homeowners' association: must serve a "community" which bears a reasonable recognizable relation to an area ordinarily identified as governmental; it must not conduct activities directed to the exterior maintenance of private residences; and the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

According to the Revenue Ruling 80-63, 1980-1 C.B. 116, no hard and fast rule can be applied as to what constitutes a "community," but that each case must be examined to determine whether the activities of the organization have sufficient community benefit to serve a social welfare purpose under IRC 501(c)(4). Although the area represented by an association may not be a community, if the association's activities benefit a community, it may still qualify for exemption.

You can be distinguished from a homeowners' association because you are not a membership organization formed and controlled by member-homeowners. There are no residents in [REDACTED]. The buildings located within the boundaries of [REDACTED] are utilized by individuals and companies in the conduct of their businesses. Therefore, you are not a homeowners' association as described in the Revenue Rulings 72-102 and 74-99.

You are organized primarily to maintain and landscape the common areas of [REDACTED] business park. A business park cannot be considered a community since it is not a geographical unit bearing a reasonably recognized relationship to an area ordinarily identified as a governmental subdivision, district or unit. In fact, [REDACTED] is a commercial development which provides a place for individuals and companies to conduct business.

You do not restrict the general public access to the common areas of [REDACTED] business park because the business owners use the buildings located within the boundaries of the business park to conduct business with the general public. While the general public has access to your business park, a member of the general public would have no reason to enter your business park unless he or she has business with one of the companies located within your business park.

In order for the businesses located in [REDACTED] to attract and serve customers, it is necessary for them to pay assessments to your organization for maintaining and landscaping the common areas, rights of way, esplanades and entrances within and adjacent to the boundaries of [REDACTED]. It is common for a shopping mall, retail center or a commercial building to maintain areas such as the right of way and esplanades encompassed along its boundaries. Therefore, you are primarily providing a service to the businesses located in [REDACTED] as

[REDACTED]

distinguished from promoting the common good and general welfare of the community.

Each members assessment is based on the amount of square footage occupied by them. The services which you provide the member/tenants are based on the square footage that each utilizes. This is an indication that you are providing a commercial service for a fee. You are not similar to a homeowners' association because each member/resident in a homeowners' association is charged the same amount of dues.

Your activities enhance the developer of [REDACTED]'s marketing of the unoccupied and undeveloped lots with the business park. By maintaining the common areas, you increase the attractiveness of the park to prospective businesses. Therefore, you are providing private benefit to the developer of [REDACTED].

Since you are providing a service for a fee, and are not made up of homeowners, you are not a homeowners' association, and do not qualify for treatment under IRC 528. Therefore, you should not file Form 1120-H.

Accordingly, it is held that you are not entitled to exemption from Federal income tax as an organization described in IRC 501(c)(4), and you are required to file Federal income tax returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

[REDACTED]

District Director

Enclosures:
Publication 892
Form 6018